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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,572	06/12/2006	Thomas Scherer	WUE-56	1701

7590 10/08/2008
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EXAMINER

BONZELL, PHILIP J

ART UNIT	PAPER NUMBER
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3644

MAIL DATE	DELIVERY MODE
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10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,572	Applicant(s) SCHERER ET AL.	
	Examiner PHILIP J. BONZELL	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 11-14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over James (GB Patent #2070139A) in view of Schwarzler (US Patent #3991782).

a. For Claims 11-14 and 17, figure 2 of James '139 discloses a main flow chamber (5) that has a first air inlet (3) with a constant flow cross-section between outer points (7 and 8) and a second air inlet (15) that is connected to and radial the main flow channel (5) by a side channel (15). Figure 2 of James '139 also discloses a movable device or flap (14) for setting a flow cross-section of the second inlet (15) that rotates about an axis (13a). James '139 is silent about the use of a device to create a low pressure area in the area of the second air inlet, however, figure 2 of Schwarzler '782 and column 2, lines 63-67 teaches, "The flap 3 is hinged to the wall structure of duct 2 by means of a hinge 9. For low pressure in the duct, i.e. during takeoff and during low speed cruising, flap 3 swings inwardly thus opening the secondary opening 22 (FIG. 3)." Thus the duct wall (2) creates a low pressure in the area of the second inlet (22). Therefore it

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would have been obvious to someone of ordinary skill in the art at the time of the invention to modify James '139 with the low pressure system of Schwarzler '782 in order to provide more air for the engine at low speeds.

b. For Claim 16, James '139 is silent about the use of a mechanical device to hold the movable element, however, figures 2 and 3 of Schwarzler '782 teaches arms (4 and 5) along with a hydraulic or pneumatic shock (1) that hold the movable element (3) in a first position where the flap (3) is partially open (figure 3) or a second position where the flap (3) is shut (figure 2). Therefore it would have been obvious to someone of ordinary skill in the art at the time of the invention to modify James '139 with the mechanical device of Schwarzler '782 in order to accurately control the movement of the flap that control the second intake in order to provide enough air to the engine.

2. Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over James (GB Patent #2070139A) in view of Schwarzler (US Patent #3991782) as applied to claim 11 above, and further in view of Bullock (US Patent #3302657). Both James '139 and Schwarzler '782 are silent about the use of an electro-mechanical control device to operate the movable element between a first and second position, however, the only figure of Bullock '657 teaches an electro-mechanical device (16) that operates a movable element (4) between a first and second position. Therefore it would have been obvious to someone of ordinary skill in the art at the time of the invention to modify James '139 and Schwarzler '782 with the motor of Bullock '657 in order to accurately

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control the movable element so that a precise amount of air can be allowed to enter the engine.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. BONZELL whose telephone number is (571)270-3663. The examiner can normally be reached on M-Th 8-5;.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. J. B./
Examiner, Art Unit 3644

/Michael R Mansen/
Supervisory Patent Examiner, Art Unit 3644

pjb